

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 169 OF 2012S

STATE

VS

ASENA SENIMOLI

Counsels : **Ms. A. Vavadakua for the State**
Mr. S. Waqainabete for Accused

Hearings : **15, 16, 17 and 18 December, 2014**

Summing Up : **19 December, 2014**

Judgment : **19 December, 2014**

JUDGMENT

1. The three assessors have returned with a unanimous verdict finding the accused guilty of murdering her child on 19 April 2012.
2. Obviously the assessors have accepted the prosecution's version of the events and thus have found the accused guilty as charged of murder.
3. I have directed myself of the Summing Up I gave the assessors today and I have reviewed the evidence called in the trial.
4. The assessors' verdict was not perverse and it was open to them to reach such conclusion on the evidence.

5. Assessors are there to assist the trial judge come to a decision on the guilt or otherwise of the accused.
6. I accept the three assessors' opinion that the accused had committed murder in this case. But they should also have seriously considered the law on infanticide.
7. On the infanticide issue, the evidence of the accused was crucial. To me, her actions before, during and after the alleged murder of her daughter revealed the actions of a woman whose balance of mind was disturbed, at the time, she drowned the baby. The way she kept the pregnancy a secret from everyone, the way she delivered the baby, the way she cut the umbilical cord and how she went about drowning the bay and how she re-acted afterwards revealed a person whose mind was disturbed.
8. After assessing all the evidence, and in the interest of justice, I find on the evidence, that the balance of the accused's mind was disturbed, at the time of her drowning her new born child. To me, this was because she had not fully recovered from the effect of giving birth to her child. The manner in which the birth was carried out showed a balance of mind that was disturbed. Furthermore, her background, her upbringing, her domestic environment and her lack of seeking medical attention and counseling, all contributed to disturbing the balance of her mind, at the time of her drowning the child.
9. Given the above and the dictates of section 244 of the Crimes Decree 2009, I am forced not to accept the assessors' unanimous opinion of guilty as charged. I find the accused not guilty of murder, but guilty of infanticide. I therefore acquit the accused on the murder charge. I find her guilty of infanticide and convict her accordingly.
10. Assessors thanked and released.



Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**